

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UBS REAL ESTATE SECURITIES INC.,

Plaintiff,

-against-

AMERICAN FIDELITY MORTGAGE  
CORP.,

Defendant.

Case No.: 07 Civ. 3701 (RJH)

ECF Case

**SCHEDULING ORDER**

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 9/13/07

Hon. Richard J. Holwell, United States District Judge

A. <sup>x</sup> **Description of the Case**

1. **Attorneys of Record**

For Plaintiff UBS Real Estate Securities Inc. ("UBS")

MILLER & WRUBEL P.C.  
250 Park Avenue  
New York, New York 10177  
(212) 336-3500  
Joel M. Miller (lead trial attorney)  
Charles R. Jacob III  
Jeremy M. Sher

For Defendant American Fidelity Mortgage Corp. ("AFMC")

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.  
Mack-Cali Corporate Center  
50 Tice Boulevard  
Woodcliff Lake, New Jersey  
(201) 391-3737  
John R. Edwards, Jr. (lead trial attorney)

2. **Basis for Federal Jurisdiction**

Federal jurisdiction exists pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000 and the parties are citizens of different states. Plaintiff UBS is a corporation organized under the laws of the state of Delaware with its principal place of business in New York. Defendant AFMC is a corporation organized under the laws of the state of New Jersey with its principal place of business in New Jersey.

**3. Claims Asserted in the Complaint**

AFMC sold mortgage loans to UBS pursuant to a Purchase Agreement, which required AFMC to repurchase from UBS any loans for which one of the first three monthly payments became delinquent. UBS alleges AFMC's breach of the Purchase Agreement by failing to repurchase certain delinquent loans (the "Early Payment Default Loans").

UBS alleges it is owed attorneys' fees and costs in this action due to AFMC's breach of representations and warranties made in the Purchase Agreement as to the Early Payment Default Loans at issue in this action.

AFMC asserts no counterclaims against UBS.

**4. Factual Issues**

UBS alleges that each of the Early Payment Default Loans became delinquent because the mortgagors failed to make timely mortgage payments. AFMC alleges that the Early Payment Default Loans were not actually delinquent, or became delinquent due to the actions of UBS or its mortgage loan servicer, GMAC.

**5. Relief Sought**

UBS seeks (a) an award of \$4,274,320.47, the full contractual repurchase price of the Early Payment Default Loans, plus interest; (b) alternatively, it seeks a declaration that UBS properly mitigated its damages through sale or foreclosure of the Early Payment Default Loans pursuant to established servicer guidelines; and (c) attorneys' fees and costs.

**B. Proposed Case Management Plan**

**1. Pending Motions**

There are no pending motions.

**2. Joinder of Additional Parties**

No additional parties may be joined after October 31, 2007.

**3. Amendments to Pleadings**

No amendments may be made to pleadings after December 28, 2007.

**4. Discovery Schedule**

All Rule 26(a)(1) disclosures shall be completed by October 19, 2007.

All fact discovery shall be completed by January 15, 2008.

All Rule 26(a)(2) disclosures shall be completed by February 15, 2008.

All expert reports shall be exchanged by February 28, 2008.

All expert discovery shall be completed by March 14, 2008.

5. **Dispositive Motions**

No dispositive motions shall be filed after April 30, 2008.

6. **Final Pretrial Order**

The final pretrial order shall be filed on May 15, 2008.

7. **Trial Schedule**

Trial will require approximately 3-4 days.

The parties expect the case to be ready for trial by May 30, 2008.

C. **Consent to Proceed before a Magistrate Judge**

UBS consents to proceed before a Magistrate Judge for all purposes.  
AFMC does not consent to proceed before a Magistrate Judge at this time.

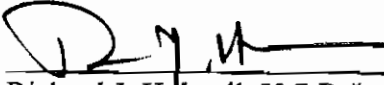
D. **Status of Settlement Discussions**

The parties are discussing settlement.

*The pretrial conference currently scheduled for 10/5/07  
is adjourned to 11/18/07 at 10:00 a.m.*

SO ORDERED.

Dated: New York, New York  
September 12, 2007

  
Richard J. Helwell, U.S.D.J.